

EXPLANATORY STATEMENT

Select Legislative Instrument No. 152, 2014

Issued by the authority of the Attorney-General

Criminal Code Act 1995

Criminal Code (Terrorist Organisation – Al-Murabitun) Regulation 2014

Section 5 of the *Criminal Code Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The Schedule to the Act sets out the Criminal Code (the Code).

Division 102 of the Code sets out the offences in relation to terrorist organisations, which are: directing the activities of a terrorist organisation; being a member of a terrorist organisation; recruiting persons to a terrorist organisation; receiving training from or providing training to a terrorist organisation; being an associate of and receiving funds from or making available funds, support or resources to a terrorist organisation.

Section 102.9 of the Code provides that section 15.4 (extended geographical jurisdiction - category D) applies to an offence against Division 102 of the Code. The effect of applying section 15.4 is that offences in Division 102 of the Code apply to conduct (or the results of such conduct) constituting the alleged offence whether or not the conduct (or the result) occurs in Australia.

Terrorist organisation is defined in subsection 102.1(1) of the Code as:

- an organisation directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act occurs) (paragraph 102.1(1)(a)); or
- an organisation specified in the regulations (paragraph 102.1(1)(b)).

The purpose of the Regulation is to specify Al-Murabitun, also known as al-Murabitoun and the Sentinels for the purpose of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code.

The Regulation enables the offence provisions in Division 102 of the Code to apply to persons with links to Al-Murabitun. Details of the Regulation are set out in Attachment A.

Subsection 102.1(2) of the Code provides that before the Governor-General makes regulations specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code, the Minister must be satisfied on reasonable grounds that the organisation is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur) or advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

In determining whether he is satisfied on reasonable grounds that the organisation is engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, the Minister takes into consideration an unclassified Statement of Reasons prepared by the Australian Security Intelligence Organisation (ASIO) in consultation with the Department of Foreign Affairs and Trade, as well as advice from the Australian Government Solicitor. The Statement of Reasons in respect of Al-Murabitun is at [Attachment B](#).

Subsection 102.1(2A) of the Code provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Code, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation.

Prior to making the Regulation, consultations were held with the Department of Foreign Affairs and Trade, ASIO and the Australian Government Solicitor. In addition, the Attorney-General wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories and the Attorney-General offered the Leader of the Opposition a briefing.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments. Subsection 102.1(3) of the Code provides that regulations for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ cease to have effect on the third anniversary of the day on which it takes effect.

Statement of Compatibility with Human Rights

Overview

The *Criminal Code (Terrorist Organisation – Al-Murabitun) Regulation 2014* makes it an offence under Division 102 of the Criminal Code, to direct the activities, become a member of, recruit, train or receiving training, get funds to, from or for Al-Murabitun, and provide support or associate with Al-Murabitun.

The offence in subsection 102.8 of the Criminal Code of associating with a terrorist organisation is limited in its application only to an organisation that is a listed organisation under Criminal Code Regulations. The offence does not apply if the association is with a close family member, or takes place in the course of practising a religion in a place used for public religious worship, or the association is for the purpose of providing humanitarian aid or for the purpose of providing legal advice or representation.

The object of the *Criminal Code (Terrorist Organisation – Al-Murabitun) Regulation 2014* is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia.

Human rights implications

This instrument engages the following rights:

- Article 6
- Article 19, and
- Article 22.

The *Criminal Code (Terrorist Organisation – Al-Murabitun) Regulation 2014* will engage the inherent right to life expressed in Article 6 of the International Covenant on Civil and Political Rights (ICCPR).

The object of the Regulation also engages Article 19 and Article 22 of the ICCPR. Whilst Article 19 protects the right to freedom of expression, this right may be subject to restrictions which include protecting national security. The right to freedom of association in Article 22 of the ICCPR protects the right to form and join associations to pursue common goals, such as political parties. Article 22(2) provides that freedom of association may be subject to restrictions imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Whilst the *Criminal Code (Terrorist Organisation – Al-Murabitun) Regulation 2014* may limit the right to freedom of association with Al-Murabitun, the association offence is subject to the safeguards outlined above. The general limits of the right to freedom of association with Al-Murabitun are reasonable, necessary and proportionate, and are in the interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life, as detailed in the Statement of Reasons (at [Attachment B](#)).

The Criminal Code offences in Division 102 applying to terrorist organisations do not target any specific religious or ethnic group and are designed to promote security and protect all members of the community from the threat of terrorism, regardless of national or ethnic origins or religious beliefs.

The information in the Statement of Reasons ([Attachment B](#)) supports the Attorney-General's decision made on reasonable grounds, that Al-Murabitun satisfies the criteria for listing as a terrorist organisation under subsection 102.1(2) of the Criminal Code.

There are safeguards and accountability mechanisms in the Act providing for consultation and enabling review of *Criminal Code (Terrorist Organisation – Al-Murabitun) Regulation 2014* specifying an organisation as a terrorist organisation. These measures include the following:

- the Commonwealth must consult with the States and Territories in accordance with the *Inter-Governmental Agreement on Counter-Terrorism Laws*. The *Criminal Code (Terrorist Organisation – Al-Murabitun) Regulation 2014* may only be made if a majority of the States and Territories do not object to the regulation within a reasonable time
- under subsection 102.1(2A) the Minister must arrange for the Leader of the Opposition to be briefed in relation to the proposed regulation

- under subsection 102.1(3) the *Criminal Code (Terrorist Organisation – Al-Murabitun) Regulation 2014* will cease to have effect on the third anniversary of the day on which it takes effect
- subsection 102.1(4) provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the Criminal Code, the Minister must make a declaration to that effect. The effect of the Minister’s declaration is that the organisation is de-listed as a terrorist organisation under Division 102 of the Criminal Code
- subsection 102.1(17) provides that an individual or an organisation may make a de-listing application to the Minister
- the *Criminal Code (Terrorist Organisation – Al-Murabitun) Regulation 2014* may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the Act, and
- both Houses of Parliament may disallow the *Criminal Code (Terrorist Organisation – Al-Murabitun) Regulation 2014* within the applicable disallowance period which is 15 sitting days after the regulation was laid before that House, as provided in subsection 102.1A(4).

Conclusion

The Regulation is compatible with human rights because it advances the protection of human rights, and to the extent that it may also limit human rights, those limitations are reasonable and proportionate.

ATTACHMENT A

Details of the *Criminal Code (Terrorist Organisation – Al-Murabitun) Regulation 2014*

Section 1- Name of Regulation

This section provides that the title of the Regulation is the *Criminal Code (Terrorist Organisation – Al-Murabitun) Regulation 2014*.

Section 2 – Commencement

This section provides that the Regulation commences on the day after it is registered.

Section 3 – Authority

This section provides that the Regulation is made under the *Criminal Code Act 1995*.

Section 4 – Terrorist organisation – Al-Murabitun

Subsection (1) provides that for paragraph (b) of the definition of ‘*terrorist organisation*’ in subsection 102.1(1) of the *Criminal Code*, the organisation known as Al-Murabitun is specified.

Subsection (2) provides that Al-Murabitun is also known by the following names:

- (a) al-Murabitoun;
- (b) the Sentinels.

ATTACHMENT B

Al-Murabitun

(‘Al-Murabitun’ translates from Arabic into English as ‘the Sentinels’) (AKA al-Murabitoun)

The following information is based on publicly available details about al-Murabitun. To the Australian Government’s knowledge, these details are accurate and reliable and have been corroborated by classified information.

Basis for listing a terrorist organisation

Division 102 of the *Criminal Code* provides that for an organisation to be listed as a terrorist organisation, the Attorney-General must be satisfied on reasonable grounds that the organisation:

- (a) is directly or indirectly engaged in, preparing, planning, or assisting in or fostering the doing of a terrorist act (whether or not a terrorist act has occurred or will occur); or
- (b) advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur).

Details of the organisation

Al-Murabitun is a Sunni Islamic extremist group with leadership based in northern Mali. Al-Murabitun was formed in August 2013 on the amalgamation of two regional extremist groups, the Movement for Unity and Jihad in West Africa (MUJWA)—also known as the Movement for Oneness and Jihad in West Africa (MOJWA), Jama’at at-tawhid wal-jihad fi gharb ‘afriqqiya (TWJWA), Mouvement pour le Unite et du Jihad en Afrqie de l’Ouest (MUJAO)—and al-Muwaqi’ in Bid-Dam (AMBD), also known as Signatories in Blood group.

- Before their formal merger, MUJWA and AMBD co-operated to conduct simultaneous attacks in Niger in May 2013 targeting a military installation in Agadez and the French-operated uranium facility at Arlit.

MUJWA and AMBD both originated as splinter groups of al-Qa’ida in the Lands of the Islamic Maghreb (AQIM). MUJWA splintered from the al-Moulathamoune battalion, a Sahel-based unit of AQIM, in December 2011. Its stated objective was to spread jihad across wider West Africa. MUJWA membership included various nationalities and ethnicities, and its formation was reportedly influenced by objections to the dominance of Algerians in AQIM leadership.

- In July 2013, MUJWA released a video of two of its members encouraging Muslims in France and the United States to conduct terrorist attacks.
- MUJWA claimed responsibility for the kidnapping of a Portuguese-French citizen near Diema, Mali in December 2012.
- MUJWA claimed responsibility for the 30 June 2012 suicide bombing attack on the Algerian national gendarmerie headquarters in Ouargla, Algeria.

AMBD originated as the al-Moulathamoune battalion. Following years of conflict between AQIM leadership and Mokhtar Belmokhtar, the leader of the al-Moulathamoune battalion, Belmokhtar, and most of the battalion departed from AQIM in December 2012 to form AMBD.

- In January 2013, AMBD claimed responsibility for the siege of the gas processing facility at In-Amenas, Algeria, which lasted four days and resulted in the deaths of 39 hostages and one security guard.

Objectives

Al-Murabitun's objective is to unite Muslims and other Islamic movements across Africa against non-Muslim and secular influences. It has publicly called for attacks on French interests and French allies in Africa as a "Shari'a-based duty".

Leadership and membership

Al-Murabitun's leader has not been publicly named. According to the group's public statements, its leader fought for the mujahideen in Afghanistan against the Soviet Union during the 1980s and in 2002 against Coalition forces following the fall of the Taliban regime.

Many of al-Murabitun members are former members of AQIM who departed when MUJWA and AMBD splintered from AQIM; others were recruited to these groups before the formation of al-Murabitun. The members are drawn from across North and West Africa including Algeria, Mauritania, Mali and Niger.

Recruitment and funding

Before the formation of Al-Murabitun, MUJWA derived funding from regional drug smuggling. In 2011, MUJWA was also involved in the kidnap of three aid workers from a refugee camp in Tindouf, Algeria who were released in return for a ransom payment.

Terrorist activity of the organisation

Directly or indirectly engaged in the doing of terrorist acts

In a statement issued in January 2014, al-Murabitun detailed its attacks during 2013. In addition to attacks conducted following the formal integration of MUJWA and AMBD as al-Murabitun, the statement also claimed responsibility on behalf of al-Murabitun for attacks conducted before al-Murabitun's formation. The attacks claimed included:

- In January 2013, AMBD attacked the gas processing facility at In-Amenas, which the al-Murabitun statement said was in response to Algeria opening its airspace to French aircraft providing support to the Mali intervention.
- A February 2013 car bombing conducted by MUJWA at In-Khalil, Mali targeting the National Movement for the Liberation of the Azawad (MNLA), a Tuareg separatist group operating in northern Mali, was reportedly initiated because the MNLA were viewed as allied to French troops.
- In May 2013, AMBD and MUJWA collaborated to plan and conduct simultaneous suicide bombing and small arms attacks against a military site in Agadez, Niger and the French-operated uranium mine and processing facility near Arlit, Niger.
- Al-Murabitun claimed responsibility for launching rockets at the Gao airport in Mali in October 2013.
- Al-Murabitun claimed responsibility for a November 2013 IED attack on a Malian army vehicle between Asongo and Menaka resulting in the deaths of four soldiers.
- In November 2013, al-Murabitun conducted a suicide attack on the French barracks in Menaka. While al-Murabitun's statement claimed French soldiers were killed, the French military stated the only casualty was the bomber.

Directly or indirectly preparing and/or planning terrorist acts

In a statement released in January 2014, al-Murabitun said it intended to continue targeting French allies with raids, car bombs, explosive devices and rockets. The statement indicated these attacks were motivated by the opposition of France and its African allies to the implementation of Islamic Law.

Advocating the doing of terrorist acts

Al-Murabitun has advocated for extremists to attack French interests 'wherever they are' as a duty under Islamic law in a statement in August 2013. The group repeated its call for attacks on France and its allies in January 2014 when it stated this was necessary because France does not accept Islamic rule.

Conclusion

On the basis of the above information, ASIO assesses al-Murabitun continues to directly and/or indirectly engage in conducting, preparing, planning, assisting, advocating or fostering the doing of acts involving threats to human life and serious damage to property. This assessment is corroborated by information provided by reliable and credible intelligence sources.

In the course of pursuing its objectives, al-Murabitun is known to have committed or threatened action that:

- causes, or could cause, serious damage to property, the death of persons or endanger a person's life or create a serious risk to a person's safety;
- are done with the intention of advancing al-Murabitun's political, religious or ideological causes;
- are done with the intention of intimidating sections of the public globally; and
- are intended to coerce or intimidate the government of a foreign country.

This assessment is corroborated by information provided by reliable intelligence sources.

Other relevant information

Proscription by the UN and other countries

The United States proscribed al-Murabitun as an alias of the al-Moulathamoune battalion in December 2013.

The United Kingdom proscribed al-Murabitun in April 2014.

Canada proscribed al-Murabitun on 2 June 2014.

New Zealand has designated al-Murabitun as a terrorist entity.

The United Nations listed al-Murabitun under the United Nations Security Council 1267 (al-Qa'ida) Sanctions Committee's consolidated list as an entity associated with al-Qa'ida on 2 June 2014.

Links to other terrorist groups

Al-Murabitun has pledged allegiance to al-Qa'ida senior leadership. In a statement issued at the same time as the announcement of the formation of al-Murabitun, Belmokhtar stated al-Murabitun pledged allegiance to al-Qa'ida leaders in Afghanistan and to al-Qa'ida leader Sheikh Ayman al-Zawahiri. He further stated that al-Murabitun adhered to the intellectual and moral methodology promoted by al-Qa'ida and its founder Usama bin Laden.

Al-Murabitun leadership figure Belmokhtar is a former leader of an AQIM battalion. As al-Murabitun was formed through the merger of two AQIM splinter groups, many of its members are former AQIM fighters.

Links to Australia

There are no known links between al-Murabitun and Australia.

Peace and mediation processes

Al-Murabitun is not known to have participated in peace or mediation processes.